



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 241-99

10 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting that he be retired under the provisions of the Temporary Early Retirement Authority (TERA).

2. The Board, consisting of Mr. Pfeiffer, Ms. Madison and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 1 February 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy for five years on 10 August 1991 and subsequently extended that enlistment for five months. The records shows that he was the father of twin girls, born on 28 December 1986, with severe birth defects. The record also shows that he was stationed at Naval Air Station, Alameda, CA from 15 November 1991 until 30 September 1994. During this period he was advanced to ENC (E-7). On 5 January 1995, Petitioner reported aboard the USS HERON (MHC 52) homeported in Corpus Christi, Texas.

d. Petitioner states that the HERON was a coastal minesweeper which normally did not deploy for more than five days

at a time. Although his daughters required a lot of care he believed that he could handle short deployments. He states that shortly after reporting aboard, the deployment schedule of the HERON was modified. He states that he made a six week, two month and a three month deployment in a year and a half. He then requested a split tour so that he could avoid an upcoming six month deployment. This request was denied.

e. Petitioner states that at the time his daughters were classified as category three in the Exceptional Family Members (EFM) program which required that he be stationed within 50 miles of a major medical facility and that he should not be detailed overseas. The nearest hospital was 180 miles away from the homeport in Corpus Christi, TX. He states that he then talked to the EFM counselor in the Bureau of Naval Personnel. She was surprised that he was stationed aboard HERON since she had recommended against those orders. Petitioner was informed that he should update his EFM package and have his command endorse a request for orders. After review of the EFM package, his daughters were upgraded to category five, which means that the Navy would attempt to keep the individual in the same location for the entire career.

f. Based on the EFM category upgrade, Petitioner requested orders to the southeastern United States, where family members could assist in the care of his daughters. This request was denied because there were no available shore billets. Subsequently, the EFM counselor recommended that he request retirement under TERA and believed he was eligible because his daughters were category 5 EFM, he was stationed in the wrong location, and could not be transferred. The counselor also informed him that the detailer and her EFM superiors agreed that retirement under TERA was the best solution. He was informed that the TERA request should be expedited because the program was about to close.

g. Petitioner requested TERA on 5 October 1996, however, the request did not leave the ship until 28 October 1996 because the command was still trying to obtain orders for him. Subsequently, his TERA request was denied because it was received after the deadline. On 13 November 1996 the commanding officer requested that Petitioner's retirement be approved even though the program had closed. The commanding officer stated, in part, as follows:

(Petitioner's) twin 10 year old daughters with severe medical problems and are currently registered in the Exceptional Family Member (EFM) Program Category 5.

The twins lack fine motor skills and cannot eat, bathe or conduct basic sanitary actions without close supervision. They only communicate thorough very basic sign language. One daughter has only one kidney. Both are extremely susceptible to infections and have been hospitalized several times and require medical appointments with specialists.

... During extended deployments away from homeport, he has brought in relatives from the East Coast or sent his family to stay with them for the duration of the operations. (He) has performed superbly but has realized an increasing personal and financial burden.

... Several avenues have been explored in order to retain this top performer (which have) all failed for various reasons. The situation has reached the point where continued naval service is not an option and a request for early retirement under the TERA program was generated This request left the ship on 25 October but due to the physical constraints of the ship class the local PSD is required to transmit the request which occurred on 28 October. It was subsequently disapproved

... Although (his) request does not now meet the technical time requirements of the program, the right thing to do for this top performer who has served honorably is to consider his application on its own merits. As his commanding officer, I would not have held his TERA request paperwork as long as I did if I had known the TERA opportunity window was near closeout. My actions were based on discussions with TERA personnel and the E-7 detailer who was awaiting the latest assignment requisition in an attempt to meet (his) reassignment needs. Here is an opportunity to take care of a stellar performer who has provided many commands, the Navy and the United States sixteen years of meritorious service. I strongly recommend and request (that he) receive approval for TERA or any other program which will entitle him and his family to retirement benefits.

Subsequently the commanding officer's request was disapproved. Petitioner states that he returned from leave in January 1997 with no other option but to accept discharge. He was honorably discharged on 9 January 1997 at the expiration of his enlistment as extended. At that time he had completed 16 years, 4 months

and 18 days of active service.

h. Attached to enclosure (2) is an advisory opinion from the Navy Personnel Command (Pers 823) which notes that the requests of Petitioner and the command were properly denied because his rating was not on the TERA list and the request was received after the TERA quotas were filled. Pers 823 recommends that the Board deny Petitioner's request.

i. Attached to enclosure (2) is Petitioner's rebuttal to the advisory opinion in which he outlines the actions taken in his case and reiterates his contention that he has been improperly treated.

j. The Board is aware that transfers to the Fleet Reserve must be effective on the first day of a month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes Petitioner's many years of excellent performance and the fact that he could not continue to deploy because of the birth defects of his daughters. The Board believes that given the absence of appropriate billets, retirement under TERA was the appropriate solution to the problem. The Board also believes that because of the delay in submission of the TERA request, it may not have received proper consideration. Additionally, even if Petitioner's rate was not eligible for TERA, he was eligible under the provisions of the governing Federal law, and the Board believes that an exception could have and should have been made. Accordingly, the Board concludes that the record should now be corrected to show that he transferred to the Fleet Reserve effective on 1 January 1997 under the provisions of TERA.

The Board further concludes that this report of proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the circumstances of this case.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Fleet Reserve effective on 1 January 1997 under the provisions of TERA.

b. That this Report of Proceedings be filed in Petitioner's

naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:



MAR 3 2000

Charles L. Tompkins
Deputy Assistant Secretary of the Navy
(Personnel Programs)